

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Terri A. Alward, et al.,

Plaintiffs,

v.

Burrelle's Information Services, a New
Jersey limited liability company, dba
Arizona Clipping Service, et al.,

Defendants.

CV-00-365-PHX-ROS

Order

Pending before the Court are the following motions:

- (1) Defendants' Motion for Attorneys Fees and Costs (Doc. #37);
- (2) Plaintiffs' Motion to Extend Time to File Further Pleadings (Doc. #40-1);
- (3) Plaintiffs' Motion for Reconsideration of Prior Orders (Doc. #40-2);
- (4) Plaintiffs' Motion for Relief from Order (Doc. #40-3);
- (5) Plaintiffs' Motion to Stay All Orders Against Plaintiffs Including Sanctions (Doc. #40-4);¹
- (6) Plaintiffs' Motion to Strike and Dismiss all of Defendants' Motions and Responses to Plaintiffs' Motion for Demonstrable Pattern of Bad Faith by Defendants (Doc. #44-1);
- (7) Plaintiffs' Motion to Reconsider and Reinstate Plaintiffs' First Amended Complaint (Doc. #44-2);

¹ Motions listed as 2 through 5 make up "Plaintiffs' Omnibus Motion[s]" ("First Omnibus" Motion).

60

- 1 (8) Plaintiffs' Motion for Leave to File Second Amended Complaint (Doc. #44-3);²
2 (9) Defendants' Motion to Seal Plaintiffs' Omnibus Motions (Doc. #46-1);
3 (10) Defendants' Motion for Sanctions (Doc. #46-2);
4 (11) Plaintiffs' Motion to Stay Judgment (Doc. #47);
5 (12) Defendants' Motion to Seal Second Amended Complaint (Doc. #51-1);
6 (13) Defendants' Motion for Sanctions (Doc. #51-2);
7 (14) Plaintiffs' Motion for Sanctions (Doc. #53);
8 (15) Defendants' Motion for Summary Disposition of Defendants' Motion for Attorneys
9 Fees and Costs (Doc. #54);
10 (16) Plaintiffs' Motion for Summary Entry of Order for Attorneys' Fees and Costs
11 (Doc. #55-1);
12 (17) Plaintiffs' Motion for Sanctions for Unethical Conduct (Doc. #55-2);
13 (18) Plaintiffs' Motion to Amend Orders and Submit Future Affidavits in Camera
14 (Doc. #56).

14 **Background**

15 Plaintiffs Terri Alward and Patricia Rader filed their original Complaint on
16 February 25, 2000 (Doc. #1). Alward, Rader, and fifteen other Plaintiffs filed a First
17 Amended Complaint on April 25, 2000 (Doc. #2).³ The Amended Complaint alleges
18 violations of Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 1981.a(a)(2) and
19 2005e(5)(g), and other statutory violations.

20 On February 27, 2001, the Court entered judgment dismissing this case.
21 Subsequently, Plaintiffs filed a Motion for Reconsideration (Doc. #35) of the Court's
22 February 27, 2001 Order (Doc. #32), and Defendant filed a Motion for Attorneys Fees and
23 Costs (Doc. # 37). On March 14, 2001, the Court issued an Order denying Plaintiffs'

25 ² Motions listed as 6 through 8 make up "Plaintiffs' Omnibus Motion[s] (Part 2)"
26 ("Second "Omnibus" Motion").

27 ³ On December 29, 2000, Plaintiffs filed a Second Amended Complaint (Sealed Doc.
28 #20). In its February 27, 2001 Order, the Court ordered Plaintiffs' Second Amended
Complaint sealed and stricken from the record.

1 Motion for Reconsideration and granting Defendants' Motion for Attorneys Fees and Costs
2 (Doc. #36).

3 After the Court's March 14, 2001 Order, Plaintiffs filed two "Omnibus" Motions
4 which include seven distinct motions. Plaintiffs' First "Omnibus" Motion, filed on March
5 22, 2001, includes: (1) one motion for reconsideration; (2) one motion for stay of judgment;
6 (3) one motion for extension of time to file further pleadings; and (4) one motion for relief
7 from order. Plaintiffs' Second "Omnibus" Motion, filed on March 31, 2001, includes: (1)
8 one motion for leave to file a Second Amended Complaint; (2) one motion to strike and
9 dismiss Defendants' motions and responses; and (3) one motion for reconsideration.
10 Moreover, Plaintiffs' Second "Omnibus" Motion purports to incorporate all motions from
11 their First "Omnibus" Motion. In addition to their "Omnibus" Motions, Plaintiffs have
12 filed: (1) one motion to stay judgment; (2) two motions for sanctions; (3) one motion for
13 summary entry of order for attorneys fees; and (4) one motion to amend prior Orders of the
14 Court. Finally, on April 18, 2001, Plaintiffs filed a Notice of Appeal to the Ninth Circuit
15 Court of Appeals (Doc. #48).

16 In response to Plaintiffs' filings, Defendants have filed six motions: (1) one motion
17 for attorneys' fees and costs; (2) two motions to seal; (3) two motions for sanctions; and (4)
18 one motion for summary disposition of attorneys' fees.

19 This Order addresses only sixteen of the above listed motions on the merits because
20 Plaintiffs' appeal to the Ninth Circuit Court of Appeals has divested this Court of
21 jurisdiction over two of the motions, as discussed below.

22 Discussion

23 I. JURISDICTION

24 A. Effect of a Notice of Appeal on District Court Jurisdiction

25 The filing of a notice of appeal generally divests the district court of jurisdiction over
26 the matters appealed. Natural Res. Def. Council v. Southwest Marine Inc., 242 F.3d 1163,
27 1166 (9th Cir. 2001) ("Once a notice of appeal is filed, the district court is divested of
28 jurisdiction over the matters being appealed.") (Quoting Griggs v. Provident Consumer

1 Discount Co., 459 U.S. 56, 58 (1982)); see also Hunter Douglas Corp. v. Lando Prods., 235
2 F.2d 631, 632 (9th Cir. 1956); Davis v. United States, 667 F.2d 822, 824 (9th Cir. 1982).

3 The District Court, however, retains jurisdiction to assist the Court of Appeals in
4 asserting its jurisdiction. Id. Moreover, the Ninth Circuit Court of Appeals has ruled that
5 District Courts retain jurisdiction to award attorneys' fees during the pendency of an appeal.
6 Masalosalo by Masalosalo v. Stonewall Ins. Co., 718 F.2d 955, 957 (9th Cir. 1983).

7 **B. Federal Rule of Appellate Procedure 4(a)(4)**

8 As shown above, the principle of exclusive appellate jurisdiction is not absolute.
9 Natural Resources Defense Council, 242 F.3d at 1166. Fed. R. App. P. 4(a)(4) dictates that
10 certain timely filed post-judgment motions stay a Notice of Appeal until the disposition of
11 the outstanding motion. Rule 4(a)(4)(B) provides:

12 [i]f a party files a notice of appeal after the court announces or enters a
13 judgment—but before it disposes of any motion listed in Rule 4(a)(4)(A)—
14 the notice becomes effective to appeal a judgment or order, in whole or in
15 part, when the order disposing of the last such remaining motion is entered.

16 Rule 4(a)(4)(A) enumerates the motions over which the District Court retains jurisdiction
17 in. The enumerated motions consist of *timely* motions made pursuant to the following
18 Rules: (1) Fed. R. Civ. P. 50(b); (2) Fed. R. Civ. P. 52(b); (3) Fed. R. Civ. P. 54; (4) Fed.
19 R. Civ. P. 59; and (5) Fed. R. Civ. P. 60. Fed. R. App. P. 4(a)(4)(A). Thus, a timely motion
20 pursuant to any of these Rules stays a Notice of Appeal, allowing the District Court to
21 resolve the pending Motion.

22 **II. PLAINTIFFS' FIRST "OMNIBUS" MOTION⁴**

23 The Court entered judgment in this case against Plaintiffs on February 27, 2001.
24 Plaintiffs' First "Omnibus" Motion was filed on March 22, 2001. Plaintiffs then filed a
25 Notice of Appeal to the Ninth Circuit on April 13, 2001. As discussed above, Fed. R. App.
26 P. 4(a)(4) stays a of Notice of Appeal when any of several enumerated motions is timely
27 filed. Fed. R. App. P. 4(a)(4)(B)(i). Because Plaintiffs' First "Omnibus" Motion does not

28 ⁴ Plaintiffs' motion is titled "Plaintiffs' Omnibus Motion[s]," and is comprised of
four distinct motions. This Order addresses each motion in turn.

1 contain any timely motion enumerated in Fed. R. App. P. 4(a)(4), Plaintiffs' First "Omnibus"
2 Motion does not operate to stay Plaintiffs' Notice of Appeal, and the Court lacks jurisdiction
3 to rule on Plaintiffs' First "Omnibus" Motion.

4 **A. Plaintiffs' Motion[s] per FRCVP 6(b) and Local R. 1.10(n) for**
5 **Enlargement of Time**

6 Pursuant to Fed. R. Civ. P. 6(b) and Rules of Practice of the United States District
7 Court for the District of Arizona 1.10(n) ("Local Rules"), Plaintiffs filed "Motion[s] per
8 FRCVP 6(b) and Local R. 1.10(n) for Enlargement of Time" (Doc. #40-1) ("Motion for
9 Enlargement of Time"). As an initial matter, Plaintiffs' Motion for Enlargement of Time
10 does not comply with Local Rule 1.10(n). Local Rule 1.10(n) requires that "[i]mmediately
11 below the title of such motion . . . there shall also be included a statement indicating whether
12 it is the first, second, or third, etc. requested extension." Plaintiffs' motion includes no such
13 statement.

14 Moreover, Plaintiffs filed their Motion for Enlargement of Time on March 22, 2001.
15 Plaintiffs then filed a Notice of Appeal on April 13, 2001. While a notice of appeal
16 generally divests the District Court of jurisdiction, Appellate Rule 4(a)(4)(A) enumerates
17 several post-judgment motions over which the District Court retains jurisdiction, but motions
18 for enlargement of time pursuant to Local Rule 1.10(n) are not included. See Fed. R. App.
19 P. 4(a)(4)(A). Therefore, Plaintiffs' Notice of Appeal divested the Court of jurisdiction to
20 consider Plaintiffs' Motion for Enlargement of Time. Accordingly, the Court will deny
21 Plaintiffs' Motion for an Enlargement of Time.⁵

22
23
24 ⁵ Even if the Court had jurisdiction to consider Plaintiffs' Motion for an Enlargement
25 of Time, Plaintiffs fail to specify what pleadings they wish to file or how much time they are
26 requesting to file such pleadings. Also, both Rule 6(b) and Local Rule 1.10(n) require
27 requests for enlargement of time to be filed before the time prescribed for doing the act if the
28 request is made to reconsider pursuant to Fed. R. Civ. P. 50, 59, or 60. Hence, it is
impossible to discern whether Plaintiff timely filed his Motion for Enlargement of Time.
Moreover, Plaintiffs' request for time to file pleadings in connection with issues on which
the Court has already decide in prior Orders, or issues decided in this Order, is moot.

1 **B. Plaintiffs' Motion for Reconsideration per Loc.R.1.10(p)**

2 As part of their First "Omnibus" Motion, filed on March 22, 2001, Plaintiffs make a
3 "Motion for Reconsideration per Loc.R.1.10(p)" ("Motion for Reconsideration") (Doc.
4 #40-2). A motion for reconsideration is construed as a motion to alter or amend judgment
5 under Fed. R. Civ. P. 59(e) if it is filed within 10 days of entry of judgment. American
6 Ironworks & Erectors, Inc. v. North Am. Constr. Corp., 248 F.3d 892, 898-99 (9th Cir.
7 2001) (citing United States v. Nutricology, Inc., 982 F.2d 394, 397 (9th Cir. 1992)). When
8 filed more than 10 days after entry of judgment, a motion for reconsideration is treated as
9 a motion made pursuant to Fed. R. Civ. P. 60(b) for relief from judgment or order. Id. at
10 899.

11 In the case at bar, Plaintiffs filed their Motion for Reconsideration on March 22,
12 2001—23 days after the Court entered judgment on February 27, 2001. Therefore, the Court
13 will construe Plaintiffs' Motion for Reconsideration as a motion for relief from judgment
14 pursuant to Fed. R. Civ. P. 60(b). Fed. R. App. P. 4(a)(4)(A) provides that a District Court
15 retains jurisdiction to consider a motion made pursuant to Fed. R. Civ. P. 60, but only if the
16 Rule 60 motion is "filed no later than 10 days (computed using Fed. R. Civ. P. 6(a)) after
17 the judgment is entered." Fed. R. App. P. 4(a)(4)(A)(vi). Therefore, because Plaintiffs'
18 Motion for Reconsideration was filed more than 10 days after entry of judgment, Plaintiffs'
19 Notice of Appeal, filed on April 13, 2001, divested the Court of jurisdiction to consider
20 Plaintiffs' Motion for Reconsideration. Accordingly, the Court will deny Plaintiffs' Motion
21 for Reconsideration for lack of subject matter jurisdiction.

22 **C. Plaintiffs' Motion for Relief from Order per FRCVP 60(b)(3) and (6)**

23 As part of their First "Omnibus" Motion, Plaintiffs filed a "Motion for Relief from
24 Order per FRCVP 60(b)(3) and (6)" ("Motion for Relief from Order") (Doc. #40-3). As
25 discussed above, the District Court may consider a Fed. R. Civ. P. 60 motion if it is filed
26 within 10 days of the entry of judgment. Fed. R. App. P. 4(a)(4)(A)(vi). Plaintiffs' Motion
27 for Relief From Order was filed on March 22, 2001—17 days after entry of judgment,
28 computed pursuant to Fed. R. Civ. P. 6(a). Therefore, because Plaintiffs' Motion for Relief

1 from Order was filed more than 10 days after the Court entered judgment in this case on
2 February 27, 2001, the Court lacks jurisdiction to consider Plaintiffs' Motion for Relief from
3 Order. Accordingly, the Court will deny Plaintiffs' Motion for Relief from Order for lack
4 of subject matter jurisdiction.

5 **D. Plaintiffs' Motion for Stay of Order per FRCVP 62(b) for Good Cause**
6 **and Demonstrable Pattern of Bad Faith by Defendants**

7 Purportedly pursuant to Fed. R. Civ. P. 62(b), as part of their First "Omnibus" Motion,
8 Plaintiffs filed a "Motion for Stay from Order per FRCVP 62(b) for Good Cause and
9 Demonstrable Pattern of Bad Faith by Defendants" ("Motion for Stay of Order") (Doc.
10 #40-4). Rule 62(b) allows for a stay of judgment pending the disposition of post-judgment
11 motions made pursuant to Fed. Rs. Civ. P. 50, 52(b), 59, or 60. Because Plaintiffs filed a
12 Notice of Appeal on April 13, 2001, and no post-judgment motions within the purview of
13 Fed. R. App. P. 4(a)(4)(A) were timely filed, the Court lacks jurisdiction to consider
14 Plaintiffs' Motion for Stay of Order. Accordingly, the Court will deny Plaintiffs' Motion for
15 Stay of Order for lack of subject matter jurisdiction.

16 **III. Plaintiffs' Second "Omnibus" Motion⁶**

17 The Court entered judgment in this case against Plaintiffs on February 27, 2001.
18 Plaintiffs filed their Second "Omnibus" Motion on March 31, 2001. Plaintiffs then filed a
19 Notice of Appeal to the Ninth Circuit on April 13, 2001 (Doc. #48). As discussed above,
20 Fed. R. App. P. 4(a)(4) stays a of notice of appeal when any of several enumerated motions
21 is timely filed. Fed. R. App. P. 4(a)(4)(B)(i). Because Plaintiffs' Second "Omnibus"
22 Motion does not contain any timely motion enumerated in Fed. R. App. P. 4(a)(4), Plaintiffs'
23 Second "Omnibus" Motion does not stay Plaintiffs' Notice of Appeal, and the Court lacks
24 jurisdiction to rule on Plaintiffs' Second "Omnibus" Motion. Accordingly, the Court will
25 deny Plaintiffs' Second "Omnibus" Motion for lack of subject matter jurisdiction.

26 ⁶ On March 31, 2001 Plaintiffs filed a Second "Omnibus" Motion that incorporates
27 prayers for relief requested in their First "Omnibus" Motion. To the extent these prayers for
28 relief are addressed in this Order regarding Plaintiffs' First "Omnibus" Motion, they are not
readdressed here, and the previous rulings apply to Plaintiffs' Second "Omnibus" Motion.

1 **A. Plaintiffs' Motion[s] in Opposition to/Request to Deny/Strike/Dismiss**
2 **ALL of Defendants' Motions/Responses to Plaintiffs' Motions for**
3 **Good Cause and Demonstrable Pattern of Bad Faith by Defendants**

4 On March 31, 2001, Plaintiffs filed a "Motion[s] in Opposition to/Request to
5 Deny/Strike/Dismiss ALL of Defendants' Motions/Responses to Plaintiffs' Motions, for
6 Good Cause and Demonstrable Pattern of Bad Faith by Defendants" ("Motion to Deny,
7 Strike, and Dismiss") (Doc. #44-1) as part of their Second Omnibus Motion (Doc. #44). In
8 their Motion to Deny, Strike, and Dismiss, Plaintiffs argue that "Defendants' failings [sic]
9 herein are/were of a **DELIBERATE, MISLEADING, DECEITFUL** nature." (Pls.' Mot.
10 to Deny, Strike, and Dismiss at 5).

11 Plaintiffs do not set forth an applicable rule upon which their Motion to Deny, Strike,
12 and Dismiss is based. If Plaintiffs' Motion to Deny, Strike, and Dismiss is not based on a
13 Rule enumerated in Fed. R. App. P. 4(a)(4)(A), then Plaintiffs' Notice of Appeal, filed April
14 13, 2001, divested the Court of jurisdiction to consider Plaintiffs' Motion to Deny, Strike,
15 and Dismiss. Moreover, to the extent the Motion is based upon one of the Rules enumerated
16 in Fed. R. App. P. 4(a)(4)(A), Plaintiffs' Motion to Deny, Strike, and Dismiss is untimely.

17 The longest period for any enumerated motion in Fed. R. App. P. 4(a)(4)(A) is 14
18 days, which applies to a Motion for Attorneys Fees pursuant to Fed. R. Civ. P. 54(d)(2).
19 Plaintiffs' Motion to Deny, Strike, and Dismiss was filed 22 days after entry of judgment.
20 Therefore, Plaintiffs' Notice of Appeal divested the Court of jurisdiction to consider
21 Plaintiffs' Motion to Deny, Strike, and Dismiss. Accordingly, the Court will deny Plaintiffs'
22 Motion to Deny, Strike, and Dismiss for lack of subject matter jurisdiction.

23 **B. Plaintiffs' Motion to Reconsider and Reinstate Plaintiffs' 1st Amended**
24 **Complaint**

25 Plaintiffs also filed a "Motion to Reconsider and Reinstate Plaintiffs' 1st Amended
26 Complaint" ("Motion to Reconsider and Reinstate") (Doc. #44-2) as part of their Second
27 "Omnibus" Motion. As discussed above, a motion for reconsideration filed more than 10
28 days after entry of judgment is construed as a motion for relief from judgment pursuant to
29 Fed. R. Civ. P. 60. American Ironworks & Erectors, Inc., 248 F.3d at 899. While Fed. R.

1 App. P. operates to allow the District Court to consider a Rule 60 motion, it also states that
2 the motion must be filed no later than 10 days after entry of judgment. Fed. R. App. P.
3 4(a)(4)(A)(vi). Plaintiffs' Motion to Reconsider and Reinstate was filed on March 31,
4 2001—22 days after the Court entered judgment on February 27, 2001. Therefore, pursuant
5 to Fed. R. App. P. 4(a)(4)(A), this Court lacks jurisdiction to consider Plaintiffs' Motion to
6 Reconsider and Reinstate, and it will be denied.

7 **C. Plaintiffs' Motion for Leave to File a Second Amended Complaint**

8 On March 31, 2001, more than one full month after judgment was entered, Plaintiffs,
9 as part of their Second "Omnibus" Motion, filed a Motion for Leave to file a Second
10 Amended Complaint (Doc. #44-3). Plaintiffs' Motion for Leave to file a Second Amended
11 Complaint is not based upon one of the rules enumerated in Fed. R. App. P. 4(a)(4)(A).
12 Therefore, Plaintiffs' Motion for Leave to file a Second Amended Complaint does not retain
13 jurisdiction in the District Court. Accordingly, the Court will deny Plaintiffs' Motion for
14 Leave to File a Second Amended Complaint for lack of subject matter jurisdiction.⁷

15 **IV. PLAINTIFFS' TIME URGENT MOTION FOR STAY PER FRCVP 62(B)**
16 **PENDING COURT REVIEW OF POST-ORDER PLEADINGS**

17 On April 13, 2001, Plaintiffs filed a "TIME URGENT Motion for Stay Per FRCVP
18 62(b) Pending court Review of Post-Order Pleadings" ("Second Motion for Stay") (Doc.
19 #47), requesting a stay pursuant to Fed. R. Civ. P. 62(b). Rule 62(b) allows the Court to stay
20 execution of judgment pending the outcome of certain post-judgment motions.

21 Plaintiffs' Second Motion for Stay requests the Court to stay proceedings "because
22 the standard statute of limitations for filing an appeal with the 9th Circuit in re the Court's
23 current/last Order in this matter expires later THIS DATE [April 13, 2001]." Subsequent to
24 their Second Motion for Stay, Plaintiffs filed a Notice of Appeal to the Ninth Circuit on April
25 13, 2001. Plaintiffs' Second Motion for Stay is not based upon any of the rules enumerated

26 ⁷ To the extent Plaintiffs' Motion may be construed as a motion made pursuant to
27 one of the enumerated rules, Plaintiffs' Motion is untimely because Plaintiffs' Second
28 Motion for Stay was filed more than 14 days after the Court entered judgment in this case on
February 27, 2001. See Fed. R. App. P. 4(a)(4)(A).

1 in Fed. R. App. P. 4(a)(4)(A). To the extent that Plaintiffs' Second Motion for Stay may be
2 construed as a motion pursuant to one of the enumerated rules, Plaintiffs' Motion is untimely
3 because Plaintiffs' filed their Second Motion for Stay more than 14 days after the Court
4 entered judgment in this case on February 27, 2001. See Fed. R. App. P. 4(a)(4)(A).
5 Therefore, Plaintiffs' Notice of Appeal divested the Court of jurisdiction to consider
6 Plaintiffs' Second Motion for stay. Accordingly, the Court will deny Plaintiffs' Second
7 Motion for Stay for lack of subject matter jurisdiction.⁸

8 **V. PLAINTIFFS' LIMITED RESPONSE/OPPOSITION TO DEFENSE'S**
9 **DILATORY [UNTIMELY] AND MISLEADING PLEADING AND**
10 **MOTION[S] OF APRIL 16, 2001 --AND-- MOTION FOR SANCTIONS**
11 **AGAINST DEFENSE COUNSEL[S]**

12 On April 18, 2001, Plaintiffs filed a "Limited Response/Opposition to Defense's
13 Dilatory [Untimely] and Misleading Pleading and Motion[s] of April 16, 2001 --and--
14 Motion for Sanctions Against Defense Counsel[s]" ("Motion for Sanctions") (Doc. #53).
15 As discussed above, the general rule is that the filing of a notice of appeal divests the
16 District Court of jurisdiction with respect to all matters appealed. Natural Res. Def. Council,
17 242 F.3d at 1166. The Ninth Circuit, however, has ruled that the District Court retains
18 jurisdiction to award attorneys fees during the pendency of an appeal. Masalosalo by
19 Masalosalo, 718 F.2d at 957. Thus, because the Plaintiffs' Motion for Sanctions does not
20 deal with the matters being appealed, and because the District Court retains jurisdiction to
21 award attorneys fees during the pendency of an appeal, the Court has jurisdiction to decide
22 the motion, though Plaintiffs filed a Notice of Appeal on April 13, 2001 (Doc. #48).

23 **A. Plaintiffs' Untimeliness Argument**

24 In their Motion for Sanctions, Plaintiffs argue that Defendants' Response to
25 Plaintiffs' Second "Omnibus" Motion is untimely pursuant to Fed. R. Civ. P. 6(a) and (e).
26 (Plaintiffs' Motion for Sanctions at 2). Plaintiffs are mistaken.

27 ⁸ Moreover, even if the Court had jurisdiction to consider Plaintiffs' motion, the
28 impending deadline that prompted Plaintiffs' Second Motion for Stay is no longer a factor,
and Plaintiffs' Second Motion for Stay is moot.

1 Local Rule 1.10(c) sets the time for filing a responsive memorandum at 10 days. Fed.
2 R. Civ. P. 6(a) requires that "[w]hen the period of time prescribed or allowed is less than 11
3 days, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the
4 computation." Fed. R. Civ. P. 6(e) indicates that when service is made by mail, "3 days shall
5 be added to the prescribed period."

6 Plaintiffs' Second "Omnibus" Motion was filed and served on Defendants by first
7 class mail on March 31, 2001, making the last day for a timely filing of Defendants'
8 Response April 18, 2001. Defendants' Response to Plaintiffs' Second "Omnibus" Motion
9 was filed on April 16, 2001. Thus, pursuant to Local Rule 1.10(c) and Fed. Rs. Civ. P. 6(a)
10 and 6(e), Defendants' Response to Plaintiffs' Second "Omnibus" Motion was timely filed.

11 **B. Plaintiffs' Request for Sanctions**

12 Plaintiffs, without citing or discussing authorities for the imposition of sanctions
13 pursuant to 28 U.S.C. § 1927, proceed to request an award of attorneys' fees and costs
14 against defense counsel pursuant to 28 U.S.C. § 1927. Section 1927 provides:

15 Any attorney or other person admitted to conduct cases in any court of the
16 United States or any Territory thereof who so multiplies the proceedings in
17 any case unreasonably and vexatiously may be required by the court to satisfy
personally the excess costs, expenses, and attorneys' fees reasonably incurred
because of such conduct.

18 "Section 1927 authorizes the imposition of sanctions against any lawyer who wrongfully
19 proliferates litigation proceedings once a case has commenced." Pacific Harbor Capital, Inc.
20 v. Carnival Air Lines, Inc., 210 F.3d 1112, 1117 (9th Cir. 1999). Sanctions may be imposed
21 under § 1927 only if there has been a determination of bad faith. Id. at 1118. Court "'assess
22 an attorney's bad faith under a subjective standard. Knowing or reckless conduct meets this
23 standard.'" Id. (quoting MGIC Indem. Corp. v. Moore, 952 F.2d 1120, 1121-22 (9th Cir.
24 1991)).

25 Plaintiffs' contend that Defendants' Motion to Seal and Motion for Sanctions (Doc.
26 #51) entitles Plaintiffs to Sanctions pursuant to 28 U.S.C. § 1927 because of continued and
27 repeated deceit of the Court, arguing that:

28 The deceitful and misleading problem with this teeth-grinding of Defense

1 Counsel[s] is that Plaintiff[s] properly sought leave to file this 2nd amended
2 complaint with a motion for the same at pp. 17-19 of its omnibus motion of
3 the 31st of March 2001. . . . Defense Counsel[s] . . . er, “forgot” to mention
4 that the attached proposed 2nd amended complaint was included with the
5 motion in re the same, as part of its pleadings of that date. . . . The false and
6 misleading and deceitful characterization of the “brazenly attached” document
7 [as Defense Counsel[s] describe the same] is only outweighed in the arena of
8 brazen actions by the author[s]’ half-truth whining complaint in re the same.

9 (Pl. Mot. for Sanctions at 4). Plaintiffs’ conclusory allegations against Defense Counsel do
10 not establish that Defense Counsel knowingly or recklessly filed their Motion to Seal and
11 Motion for Sanctions in bad faith. Accordingly, the Court will deny Plaintiffs’ Motion for
12 Sanctions.

13 **VI. PLAINTIFFS’ MOTION FOR SUMMARY ENTRY OF ORDER FOR**
14 **ATTORNEYS FEES AND COSTS AGAINST DEFENSE COUNSEL[S]**
15 **UNDER 28 U.S.C. # 1927 [sic] AND MOTION FOR SANCTIONS**
16 **AGAINST DEFENSE COUNSEL[S] FOR UNETHICAL MISCONDUCT**

17 On April 25, 2001, Plaintiffs filed a “Motion for Summary Entry of Order for
18 Attorneys Fees and Costs Against Defense Counsel[s] Under 28 U.S.C. # 1927 [sic] and
19 Motion For Sanctions Against Defense Counsel[s] for Unethical Misconduct” (“Motion for
20 Summary Entry of Attorneys Fees” and “Motion for Sanctions,” respectively) (Doc. #55).
21 As discussed above, because the instant Motion does not deal with the matters being
22 appealed, and because the District Court retains jurisdiction to award attorneys fees during
23 the pendency of an appeal, the Court has jurisdiction to decide the instant Motion even
24 though Plaintiffs filed a Notice of Appeal on April 13, 2001 (Doc. #48). See Natural Res.
25 Def. Council, 242 F.3d at 1166; Masalosalo by Masalosalo, 718 F.2d at 957.

26 **A. Plaintiffs’ Motion for Summary Entry of Order for Attorneys Fees and**
27 **Costs Against Defense Counsel[s] Under 28 U.S.C. # 1927 [sic]**

28 In their Motion for Summary Entry of Attorneys Fees, Plaintiffs request summary
entry of attorneys’ fees against defense counsel pursuant to 28 U.S.C. §1927. Because the
Court has denied Plaintiffs’ Motion for Sanctions filed on April 18, 2001 (Doc. #53), the
Court will deny as moot Plaintiffs Motion for Summary Entry of Attorneys’ Fees.

B. Plaintiffs’ Motion for Sanctions Against Defense Counsel[s] for Unethical
Misconduct

Without making any argument or setting forth any basis for the imposition of Rule

1 11 sanctions, Plaintiffs, in their prayer for relief, also request sanctions against defense
2 counsel pursuant to Fed. R. Civ. P. 11.

3 Fed. R. Civ. P. 11 requires that a motion for sanctions "describe the specific conduct
4 alleged to violate" the rule. Fed. R. Civ. P. 11(c)(1)(A). Further, Fed. R. Civ. P. 11 requires
5 that "a motion for sanctions . . . be made separately from other motions and requests" and
6 that the motion "shall not be filed with or presented to the court unless, within 21 days after
7 service of the motion" the alleged violation is not corrected. *Id.*

8 Because Plaintiffs' Motion fails to comply with each of the above listed requirements
9 of Fed. R. Civ. P. 11, the Court will deny Plaintiffs' Motion for Sanctions, to the extent
10 Plaintiffs request Rule 11 sanctions against defense counsel.

11 **VII. PLAINTIFFS' SUBMISSOIN [sic] OF NEW EVIDENCE TO COURT**
12 **AMENDING PRIOR PLEADINGS, PER FRCVP 60(B)(1) [MEDICAL**
13 **"EXCUSE" JUSTIFIED]; AND MOTION TO COURT TO AMEND**
ORDER[S] AND SUBMIT FUTURE AFFIDAVITS *IN CAMERA*

14 As mentioned above, on April 13, 2001, Plaintiffs filed a Notice of Appeal to the
15 Ninth Circuit (Doc. #48). On April 25, 2001 Plaintiffs filed a Submissoin [sic] of **NEW**
16 **EVIDENCE** to Court amending prior pleadings, per FRCVP 60(b)(1) [medical "excuse"
17 justified]; AND **MOTION** to Court to **AMEND** Order[s] and submit future affidavits *in*
18 *camera* ("Motion to Amend") (Doc. #56). Because Plaintiffs' filed a Notice of Appeal, the
19 Court has no jurisdiction to grant this motion. *Davis*, 667 F.2d 822 at 824; *Hunter Douglas*
20 *Corp.*, 235 F.2d 631 at 632.⁹ Also, after a final judgment has been entered in an action, a
21 motion to amend "may be considered only if the judgment is first reopened under Rule 59
22 or 60." *Lindauer v. Rogers*, 91 F.3d 1335, 1356 (9th Cir. 1996). Accordingly, the Court
23 will deny Plaintiffs' Motion to Amend.

24 **VIII. DEFENDANTS' RESPONSE TO PLAINTIFFS' MARCH 22, 2001**
OMNIBUS MOTION[S] --AND-- MOTION TO SEAL PLAINTIFFS'
25 **OMNIBUS MOTION[S], AND MOTION FOR SANCTIONS**

26 In response to Plaintiffs First "Omnibus" Motion (Doc. # 40), on April 9, 2001,

27 ⁹ For discussion of the effects of filing Notice of Appeal on the jurisdiction of this
28 court, see section I.

1 Defendants filed a pleading titled "Response to Plaintiffs' March 22, 2001 Omnibus
2 Motion[s] --and-- Motion to Seal Omnibus Motion[s], and Motion for Sanctions"
3 ("Defendants' First Motion to Strike and Seal" and "Defendants' First Motion for Sanctions
4 Pursuant to 28 U.S.C. § 1927," respectively) (Doc. # 46-1 & 46-2).

5 As mentioned above, the general rule is that the filing of a notice of appeal divests
6 the District Court of jurisdiction with respect to all matters being appealed. Natural Res.
7 Def. Council, 242 F.3d at 1166. The Ninth Circuit, however, has ruled that the District
8 Court retains jurisdiction to award attorneys fees during the pendency of an appeal.
9 Masalosalo by Masalosalo, 718 F.2d at 957. Therefore, because Defendants' First Motion
10 to Strike and Seal, and Defendants' First Motion for Sanctions are not within the scope of
11 the matters on appeal, and because the District Court retains jurisdiction to award attorneys
12 fees during the pendency of an appeal, the Court has jurisdiction to consider Defendants'
13 Motions.

14 **A. Defendants' Motion to Strike and Seal Plaintiffs' First "Omnibus"**
15 **Motion**

16 Pursuant to Local Rule 1.10(c) and Fed. R. Civ. P. 6(a) and 6(e), a response to
17 Defendants' Motion to Strike and Seal was due on April 26, 2001. Plaintiffs filed no
18 Response. Pursuant to Local Rule 1.10(c) and Fed. R. Civ. P. 6(a) and 6(e), Plaintiffs had
19 13 days from the date of service to file a response to Defendants' Motion to Strike and Seal.
20 The consequence of failing to respond to this Motion is set forth in Local Rule 1.10(i),
21 which provides: "[I]f the opposing party does not serve and file the required answering
22 memoranda . . . such non-compliance may be deemed a consent to the denial or granting of
23 the motion and the Court may dispose of the motion summarily." Thus, pursuant to Local
24 Rule 1.10(i), the Court may deem Plaintiffs' failure to respond to Defendants' Motion to
25 Strike and Seal a consent to the granting of the Motion. See Brydges v. Lewis, 18 F.3d 651,
26 652 (9th Cir. 1994).

27 Moreover, the Court finds that Plaintiffs' First Omnibus Motion contains scandalous
28 and defamatory material that justifies striking and sealing it. The scandalous and defamatory

1 material in question has previously been stricken and sealed as part of the Court's
2 February 27, 2001 Order striking and sealing Plaintiffs' proposed Second Amended
3 Complaint. Fed. R. Civ. P. 12(f); Erection Co., Inc., 900 F.2d at 170. Therefore, the Court
4 will grant Defendants' First Motion to Strike and Seal.

5 **B. Defendants' Motion for Sanctions Pursuant to 28 U.S.C. § 1927** ¹⁰

6 Defendants also request an award of attorneys' fees and costs in connection with their
7 Motion to Strike and to Seal pursuant to 28 U.S.C. § 1927. As discussed above, "Section
8 1927 authorizes the imposition of sanctions against any lawyer who wrongfully proliferates
9 litigation proceedings once a case has commenced." Pacific Harbor Capital, 210 F.3d at
10 1117. Sanctions may be imposed under § 1927 only if there has been a determination of bad
11 faith. Id. at 1118. The Court "'assess[es] an attorney's bad faith under a subjective standard.
12 Knowing or reckless conduct meets this standard.'" Id. (quoting MGIC Indem. Corp., 952
13 F.2d at 1121-22).

14 Defendants claim that by including scandalous and defamatory material in their First
15 "Omnibus" Motion, Plaintiffs have unreasonably and vexatiously multiplied the proceedings
16 in this case. The Court finds that Plaintiffs have acted in bad faith by filing their First
17 Omnibus Motion which repeats the same scandalous and defamatory material that the Court
18 previously sealed and struck as part of Plaintiffs' proposed Second Amended Complaint
19 filed on December 29, 2000 (Doc. #20). Indeed, this is the third time that the Court has been
20 required to strike scandalous and defamatory material from one of Plaintiffs' pleadings. See
21 12/15/00 Order (Doc. #18) and 2/27/01 Order (Doc. #32). The Court will therefore allow
22 Defendants to recover attorneys' fees and costs incurred in connection with their Motion to
23 Strike and to Seal. Accordingly, the Court will grant Defendants' First Motion for Sanctions
24

27 ¹⁰ In its Order dated February 27, 2001, the Court granted a motion filed by
28 Defendants for attorneys fees pursuant to 28 U.S.C. § 1927.

1 Pursuant to 28 U.S.C. § 1927.¹¹

2 **IX. DEFENDANTS' RESPONSE TO PLAINTIFFS' MARCH 31, 2001 OMNIBUS**
3 **MOTION[S] (PART 2) --AND-- MOTION TO SEAL AND MOTION FOR**
4 **SANCTIONS**

5 On March 31, 2001, Plaintiffs filed their Second "Omnibus" Motion (Doc. #44) to
6 which Defendants filed a response titled "Response to Plaintiffs' March 31, 2001 Omnibus
7 Motion[s] (Part 2) --and-- Motion to Seal and Motion for Sanctions" ("Defendants' Motion
8 to Strike and Seal Plaintiffs' Second Amended Complaint" and "Defendants' Second
9 Motion for Sanctions Pursuant to 28 U.S.C. § 1927," respectively) (Doc. # 51-1 & 51-2).

10 As discussed above, the District Court retains jurisdiction to award attorneys fees
11 during the pendency of an appeal. Masalosalo by Masalosalo, 718 F.2d at 957. Because,
12 Defendants' Motion to Strike and Seal Plaintiffs' Second Amended complaint and
13 Defendants' Second Motion for Sanctions are not a part of the matters on appeal, and
14 because the District Court retains jurisdiction to award attorneys fees during the pendency
15 of an appeal, the Court has jurisdiction to consider the Defendants' motions.

16 **A. Defendants' Motion to Strike and Seal Plaintiffs' Second Amended**
17 **Complaint**

18 Defendants argue that Plaintiffs' Second "Omnibus" Motion contains scandalous and
19 defamatory material in that Plaintiffs attached a copy of their proposed Second Amended
20 Complaint. (Pl. Mot. at 2). Defendants request that the Court, once again, strike and seal
21 Plaintiffs' Second Amended Complaint. (Pl. Mot. at 3).

22 As mentioned above, the Court had already stricken and sealed Plaintiffs' proposed
23 Second Amended Complaint because it contains scandalous and defamatory material.

24 ¹¹ In their First Motion for Sanctions Pursuant to 28 U.S.C. § 1927, Defendants also
25 seek to amend the amount of their requested attorneys' fees to include their fees incurred in
26 connection with the motion ("Motion to Amend their Motion for Attorneys' Fees") (Doc.
27 #46-2). Because the Court will grant Defendants' Motion for Summary Disposition of
28 Attorneys Fees (Doc. #54), however, the Court will deny as moot Defendants Motion to
Amend their prior Motion for Attorneys' Fees. This does not, however, preclude Defendants
from filing in the future a motion for attorneys' fees in connection with the granting of
Defendants' First Motion for Sanctions Pursuant to 28 U.S.C. § 1927.

1 Accordingly, because Plaintiffs have again filed the same proposed Second Amended
2 Complaint containing the same scandalous and defamatory material, the Court will grant
3 Defendants' Motion to Strike and Seal Plaintiffs' Second Amended Complaint attached to
4 Plaintiffs' Second "Omnibus" Motion.

5 **B. Defendants' Second Motion for Sanctions Pursuant to 28 U.S.C. § 1927**

6 Pursuant to 28 U.S.C. § 1927, Defendants also request an award of attorneys' fees
7 and costs in connection with their Motion to Strike and to Seal (Doc. # 51). As discussed
8 above, sanctions may be imposed under § 1927 only if there has been a determination of bad
9 faith. Pacific Harbor Capital, 210 F.3d at 1118. The Court "'assess[es] an attorney's bad
10 faith under a subjective standard. Knowing or reckless conduct meets this standard.'" Id.
11 (quoting MGIC Indem. Corp., 952 F.2d at 1121-22).

12 The Court finds that Plaintiffs' attachment of the Second Amended Complaint, which
13 previously had been stricken and sealed by the Court, demonstrates bad faith on the part of
14 Plaintiffs. Accordingly, the Court will grant Defendants' Second Motion for Sanctions
15 Pursuant to 28 U.S.C. § 1927.

16 **X. DEFENDANTS' MOTION FOR SUMMARY DISPOSITION OF MOTION
17 FOR ATTORNEYS' FEES AND COSTS PURSUANT TO 28 U.S.C. § 1927**

18 On March 13, 2001, Defendants filed a Motion for Attorneys' Fees and Costs
19 Pursuant to 28 U.S.C. § 1927 ("Motion for Attorneys' Fees and Costs") (Doc. #37). In their
20 Motion for Attorneys' Fees and Costs, Defendants set forth the amount of attorneys' fees
21 and costs to which they claim to be entitled under the Court's February 27, 2001 Order
22 which awarded Defendants' attorneys' fees pursuant to 28 U.S.C. § 1927. (Def. Mot. for
23 Attorneys Fees at 2). On April 20, 2001, Defendants filed a Motion for Summary
24 Disposition of Motion for Attorneys Fees and Costs Pursuant to 28 U.S.C. § 1927 (Doc.
25 #54) ("Motion for Summary Disposition of Attorneys Fees and Costs").

26 Because the Defendants' Motion for Summary Disposition of Attorneys Fees and
27 Costs does not deal with the matters being appealed, and because the District Court retains
28 jurisdiction to award attorneys fees during the pendency of an appeal, the Court has

1 jurisdiction to consider Defendants' Motion.

2 Pursuant to Local Rule 1.10(c) and Fed. R. Civ. P. 6(a) and 6(e), a response to
3 Plaintiffs' Motion for Attorneys' Fees was due on March 30, 2001. No Response was filed.
4 As discussed above, the consequence of failing to respond to Defendants' Motion for
5 Attorneys Fees and Costs is set forth in Local Rule 1.10(i), which provides: "[I]f the
6 opposing party does not serve and file the required answering memoranda . . . such non-
7 compliance may be deemed a consent to the denial or granting of the motion and the Court
8 may dispose of the motion summarily." Thus, pursuant to Local Rule 1.10(i), the Court may
9 deem Plaintiffs' failure to respond to Defendants' Motion for Attorneys Fees a consent to
10 the granting of the Motion. Moreover, the Court has reviewed the costs and attorneys' fees
11 and finds them to be reasonable. Accordingly, the Court will grant Defendants' Motion for
12 Summary Disposition of Motion for Attorneys' Fees and Costs.

13 **IT IS THEREFORE ORDERED** that Plaintiffs' Motion[s] per FRCVP 6(b) and
14 Local R. 1.10(n) for Enlargement of Time (Doc. # 40-1) is **DENIED**.

15 **IT IS FURTHER ORDERED** that Plaintiffs' Motion for Reconsideration per
16 Loc.R.1.10(p) (Doc. #40-2) is **DENIED**.

17 **IT IS FURTHER ORDERED** that Plaintiffs' Motion for Relief from Order per
18 FRCVP 60(b)(3) and (6) (Doc. #40-3) is **DENIED**.

19 **IT IS FURTHER ORDERED** that Plaintiffs' Motion for Stay of Order per FRCVP
20 62(b) for *Good Cause and Demonstrable Pattern of Bad Faith by Defendants* (Doc. #40-4)
21 is **DENIED**.

22 **IT IS FURTHER ORDERED** that Plaintiffs' Request to Deny/Strike/Dismiss All
23 of Defendants' Motions and Responses to Plaintiffs' Motions for *Good Cause and*
24 *Demonstrable Pattern of Bad Faith by Defendants* (Doc. #44-1) is **DENIED**.

25 **IT IS FURTHER ORDERED** that Plaintiffs' Motion to Reconsider and Reinstate
26 Plaintiffs' 1st Amended complaint (Doc. #44-2) is **DENIED**.

27 **IT IS FURTHER ORDERED** that Plaintiffs' Motion for Leave to File a Second
28 Amended Complaint (Doc. #44-3) is **DENIED** for lack of subject matter jurisdiction.

1 **IT IS FURTHER ORDERED** that Plaintiffs' TIME URGENT Motion for Stay Per
2 FRCVP 62(b) Pending Court Review of Post-Order Pleadings (Doc. #47-1) is **DENIED**.

3 **IT IS FURTHER ORDERED** that Plaintiffs' Limited Response/Opposition to
4 Defense's Dilatory [Untimely] and Misleading Pleading and Motion[s] of April 16, 2001
5 --and-- Motion for Sanctions Against Defense Counsel[s] (Doc. #53) is **DENIED**.

6 **IT IS FURTHER ORDERED** that Plaintiffs' Motion for Summary Entry of Order
7 for Attorneys Fees and Costs Against Defense Counsel[s] Under 28 U.S.C. # 1927 [sic] and
8 Motion For Sanctions Against Defense Counsel[s] for Unethical Misconduct (Doc. #55) is
9 **DENIED** as moot.

10 **IT IS FURTHER ORDERED** that Plaintiffs' Submissoin [sic] of **NEW**
11 **EVIDENCE** to Court amending prior pleadings, per FRCVP 60(b)(1) [medical "excuse"
12 justified]; AND MOTION to Court to **AMEND** Order[s] and submit future affidavits *in*
13 *camera* (Doc. #56) is **DENIED** for lack of subject matter jurisdiction.

14 **IT IS FURTHER ORDERED** that Defendants' Motion to Seal Plaintiffs' Omnibus
15 Motion[s] (Doc. #46-1) is **GRANTED**. The Clerk of Court is directed to strike and seal
16 Plaintiffs' Omnibus Motion[s] (Doc. #40).

17 **IT IS FURTHER ORDERED** that Defendants' Motion for Attorneys Fees and Costs
18 Pursuant to 28 U.S.C. § 1927 (Doc. #46-2) is **GRANTED**.

19 **IT IS FURTHER ORDERED** that Defendants' Motion to Seal Plaintiffs' Second
20 Amended Complaint (Doc. #51) is **GRANTED**. The Clerk of Court is directed to Seal
21 Plaintiffs' Second Amended Complaint attached as an exhibit to Plaintiffs' Omnibus
22 Motion[s] (Part 2) (Doc. #44).

23 ///

24 ///

25 ///

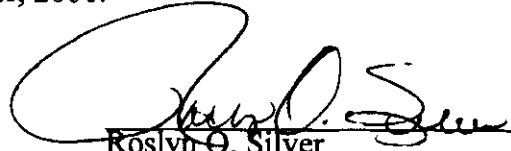
26

27

28

1 **IT IS FURTHER ORDERED** that Defendants' Motion for Summary Disposition
2 of Motion for Attorneys' Fees and Costs Pursuant to 28 U.S.C. § 1927 (Doc. #51) is
3 **GRANTED.**

4 DATED this 5 day of December, 2001.

5
6 
7 Roslyn O. Silver
8 United States District Judge
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28